

**IN THE COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

KIMBERLY ANN SMITH-GENTILE,)

Appellant,)

vs.)

THE STATE OF OKLAHOMA,)

Appellee.)

NOT FOR PUBLICATION

No. F-2018-565

**FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

SEP 12 2019

S U M M A R Y O P I N I O N

**JOHN D. HADDEN
CLERK**

KUEHN, VICE PRESIDING JUDGE:

Appellant, Kimberly Ann Smith-Gentile, was convicted by a jury in Pottawatomie County District Court, Case No. CF-2017-342, of ten counts of Possessing Child Pornography. On May 31, 2018, the Honorable Dawson Engle, Associate District Judge, sentenced her in accordance with the jury's recommendation to ten years imprisonment on Counts 1-8 and 10, and twenty years imprisonment on Count 9, with all sentences to be served concurrently. Appellant must serve 85% of her sentences before parole consideration. 21 O.S.Supp.2015, § 13.1(16).

Appellant raises two propositions of error in support of her appeal:

PROPOSITION I. THE STATE'S EVIDENCE WAS INSUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT MS. GENTILE KNOWINGLY POSSESSED 10 IMAGES OR VIDEOS OF JUVENILE PORNOGRAPHY.

PROPOSITION II. UNDER THE FACTS OF THIS CASE, A SENTENCE OF 20 YEARS IS EXCESSIVE IN VIOLATION OF THE UNITED STATES AND OKLAHOMA CONSTITUTIONS.

After thorough consideration of these propositions, the briefs of the parties, and the record on appeal, we affirm. Appellant was convicted of finding child pornography on a smartphone belonging to her boyfriend, Jaymes Dean, but failing to notify authorities, and instead keeping the phone in her possession for several weeks after Dean left town. The fact that the phone contained multiple files of child pornography was not disputed.

In Proposition I, Appellant claims the evidence was insufficient to show that she knowingly possessed the child pornography, particularly ten different items of pornography. Once Dean left the phone behind and traveled out of state, Appellant, with knowledge that the phone contained pornographic material, had the authority to control its disposition. At trial, Appellant claimed she was simply unsure of what to do with the phone. The fact remains, however, that she knew it contained child pornography, viewed a number of the images, and even recognized the daughter of a friend in one of the images. Yet at no time did she attempt to notify authorities, even after a social worker informed her that Dean

was a convicted sex offender. Instead, Appellant's conduct suggested that she wanted to use the evidence on her own schedule and for her own purposes. Furthermore, Appellant's claim that she only viewed one video file was convincingly contradicted at trial. A rational juror could conclude, beyond a reasonable doubt, that Appellant knowingly possessed ten items of child pornography. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); *Hamilton v. State*, 2016 OK CR 13, ¶ 4, 387 P.3d 903, 905. Proposition I is therefore denied.

In Proposition II, Appellant claims her sentences are shockingly excessive. While the jury recommended the maximum term on one count, the prosecutor never requested a specific punishment, but expressly left that to the jurors' discretion. The trial court ordered concurrent service of all sentences. Finally, we note that the images in question were not simply collected from the internet or some other source; they were direct evidence of child rapes and other sex crimes that Dean himself had committed. Appellant recognized Dean as the adult perpetrator in some of the images. Considering all these circumstances, the cumulative sentences imposed are not shocking to the conscience. *Rea v. State*, 2001 OK CR 28, ¶ 5, 34 P.3d 148, 149. Proposition II is denied.

DECISION

The Judgment and Sentence of the District Court of Pottawatomie County is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF POTTAWATOMIE COUNTY
THE HONORABLE DAWSON ENGLE, ASSOCIATE DISTRICT JUDGE

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OPINION BY KUEHN, V.P.J.

LEWIS, P.J.: CONCUR
LUMPKIN, J.: CONCUR
HUDSON, J.: CONCUR
ROWLAND, J.: CONCUR